

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

NORTH SHORE WASTEWATER
TREATMENT, L.L.C.

For Review and Approval of Rate
Increases and Revised Rate
Schedules.

DOCKET NO. 2006-0486

ORDER NO. 23579

Filed August 7, 2007
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2007 AUG -8 A 9:13

RECEIVED

In the Matter of the Application of)
)
 NORTH SHORE WASTEWATER)
 TREATMENT, L.L.C.)
)
 For Review and Approval of Rate)
 Increases and Revised Rate)
 Schedules.)
)

Order No. 23579

By this Order, the commission approves NORTH SHORE WASTEWATER TREATMENT, L.L.C.'s ("NSW") request to waive the requirements of Hawaii Administrative Rules ("HAR") § 6-61-88(2) that Applicant express the increase in its proposed rates in terms of a percent ("Waiver Request").¹ The commission also finds that NSW's application is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88, and, thus, the filing date of NSW's completed Application is June 22, 2007.² Finally, the commission instructs the Parties to file a stipulated procedural order for the commission's review and approval within thirty days from the date of this Order. If the Parties are unable to stipulate to a procedural order, the commission will issue its

²NSW filed its Application; Exhibit NSW 1 Through Exhibit NSW 12; Exhibit NSW T-100; Verification; and Certificate of Service (collectively, "Application"). Copies of the Application were served on the Consumer Advocate.

own procedural order that complies with the time requirements of HRS § 269-16(f)(3).

I.

Background

NSW, a Hawaii limited liability company, is a public utility as defined by HRS § 269-1 and, thus, is regulated by the commission under Chapter 269, HRS.³ NSW is authorized to provide wastewater service to the Turtle Bay Resort Hotel ("Hotel"), the Turtle Bay Golf Club ("Golf Club"), certain restaurants located in or adjacent to the Hotel and the Golf Club and certain surrounding properties including the Kuilima Estates East ("KEE") and Kuilima Estates West ("KEW") condominium projects, and the Ocean Villas condominium project, and approximately three hundred acres of resort zoned lands that are planned for development.

On June 22, 2007, NSW filed its Application for commission approval to, among other things, increase its rates to produce an overall revenue of \$745,430. If approved, the proposed changes would generate an additional \$723,350 in revenues above the \$22,050 currently paid by KEE and KEW to Kuilima Resort Company ("KRC").⁴ NSW proposes to increase its

³NSW received commission authority in the form of a certificate of public convenience and necessity ("CPCN") to provide wastewater service as a public utility in 2005. See In re North Shore Wastewater Treatment, L.L.C., Docket No. 04-0298, Decision and Order No. 21864, filed on June 14, 2005.

⁴KRC is NSW's predecessor-in-interest. Pursuant to Order No. 22045, filed on September 21, 2005, in Docket No. 05-0238, the commission ordered NSW to (1) immediately cease and desist

water consumption rates and impose certain new charges as follows:

MONTHLY RATES & CHARGES

	Present Rates	Proposed Fixed Charge Per Equivalent Units ⁵	Proposed Treatment Charge
Hotel	\$0.00	\$23.43	\$23,849.57
Kuilima Estates East	\$0.00	\$23.43	\$4,271.57
Kuilima Estates West	\$0.00	\$23.43	\$7,119.28
Ocean Villas	\$0.00	\$23.43	\$355.96
Restaurants	\$0.00	\$23.43	\$0.00
Other Commercial	\$0.00	\$23.43	\$0.00

In addition, NSW requests commission approval to, among other things establish a power cost adjustment clause to account for the cost of electricity.

On July 5, 2007, the Consumer Advocate filed its Statement of Position Regarding Completeness of Application ("Statement of Completion"), stating that it does not object to the completeness of NSW's Application and that it does not object

from charging ratepayers its initial tariff wastewater rates previously approved by the commission in Docket No. 04-0298, and (2) revert to the wastewater rates charged by KRC prior to the transfer of wastewater operations to NSW, following the filing of informal complaints against NSW by KEE and KEW subsequent to the commission's grant of a CPCN to NSW.

⁵The number of Equivalent Units for each customer is described in Exhibit NSW 9-2 of the Application.

to the requested waiver of HAR § 6-61-88(2) to calculate the increase in proposed rates in terms of a percent.

II.

Discussion

NSW is a public utility with annual gross operating revenues of less than \$2 million, and, as such, it filed its Application under HAR § 6-61-88 (Requirements for General Rate Increase Applications by a Public Utility with Annual Gross Operating Revenues of Less than \$2,000,000) and HRS § 269-16(f). Under HRS § 269-16(f), the commission must make every effort to issue its proposed decision and order within six months from the filing date of NSW's completed Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene." HRS § 269-16(f)(3).

A.

Waiver Request

HAR Chapter 6-61, Subchapter 8, governs rate increase applications and tariff changes. In relevant part, HAR § 6-61-88(2) requires that an application for rate increase by a public utility with annual gross revenues of less than \$2,000,000 must contain the total increase requested "expressed in terms of dollars and per cent." Moreover, if different classes of service are affected by the proposed rate increase,

"the increase requested shall be expressed in both dollars and by percentage for each class." HAR § 6-61-88(2).

According to NSW, pursuant to Decision and Order No. 22282, filed on February 10, 2006, in Docket No. 05-0238, NSW's initial wastewater rates, approved by the commission in Docket No. 04-0298, were permanently suspended and thus NSW could not charge for wastewater service unless and until new wastewater rates were approved by the commission following the conclusion of a general rate case. Because NSW is not authorized to charge for wastewater service, NSW states that it is unable to calculate a percentage for the proposed increase for each class of service, or to express the total increase in the proposed rates in terms of a percent (any percentage multiplied by NSW's current effective rate, i.e., \$0.00, will be zero). Accordingly, NSW requests that the commission waive the requirements of HAR § 6-61-88(2).

Under HAR § 6-61-92, the commission may modify the requirements of Subchapter 8, HAR Chapter 6-61, in its discretion, if the requirements of the subchapter would impose a financial hardship on the applicant or be unjust or unreasonable. Further, under HRS § 269-16(f), the commission is authorized to amend its rules and procedures "to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers." HRS § 269-16(f).

Here, the commission agrees with the Consumer Advocate⁶ that the provisions of HAR § 6-61-88(2) should be waived in this instance, as inapplicable and unreasonable. Accordingly, the commission approves NSW's Waiver Request.

B.

Completed Application

Upon review, the commission finds that NSW's Application is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88, and, thus, concurs with the Consumer Advocate's assessment regarding the completeness of the Application. Accordingly, the filing date of NSW's completed Application is June 22, 2007.

C.

Stipulated Procedural Order

HRS § 269-16(f)(3) requires the commission to issue a procedural order allowing the commission to complete its review and issue its proposed decision and order within the six-month period prescribed in the subsection. For this reason, the Parties are instructed to: (1) initiate the discovery process without delay; and (2) submit a stipulated procedural order setting forth the issues, procedural schedule, and procedures to govern NSW's Application, within thirty days from

⁶See Consumer Advocate's Statement of Completion at 2.

the date of this Order.⁷ The stipulated procedural schedule to be submitted by the Parties shall, at a minimum, provide that: (1) NSW's rebuttal testimony (or rebuttal statement of position), if any, be filed by Friday, November 16, 2007; and (2) the Parties' settlement agreement, if any, be filed by Friday, November 23, 2007, in order for the commission to reasonably meet the six-month deadline of December 22, 2007. If the Parties are unable to agree on a procedural order, as prescribed, the commission will issue its own procedural order in accordance with HRS § 269-16(f)(3).

Under HRS § 269-16(f)(3), in the event that the conditions of the subsection are fully met (i.e., the Parties strictly comply with the established procedural schedule and no person is granted intervention), the Parties shall not be entitled to a contested case hearing prior to the issuance of the commission's proposed decision and order.

III.

Orders

THE COMMISSION ORDERS:

1. NSW's request to waive the requirements of HAR § 6-61-88(2) that NSW express the increase in its proposed rates in terms of a percent is approved.

2. The filing date of NSW's completed Application is June 22, 2007.

⁷In the event intervenor or participant status is later granted to any interested person, the commission will amend the procedural order accordingly, to the extent necessary.

3. The Parties shall: (a) initiate the discovery process without delay; and (b) unless directed otherwise, submit a stipulated procedural order setting forth the issues, procedural schedule, and procedures to govern NSW's Application, within thirty days from the date of this Order. The stipulated procedural schedule to be submitted by the Parties shall, at a minimum, provide that: (a) NSW's rebuttal testimony (or rebuttal statement of position), if any, be filed by Friday, November 16; and (b) the Parties' settlement agreement, if any, be filed by Friday, November 23, 2007, in order for the commission to reasonably meet the six-month deadline of December 22, 2007. If the Parties are unable to agree on a procedural order, as prescribed, the commission will issue its own procedural order in accordance with HRS § 269-16(f)(3).

DONE at Honolulu, Hawaii AUG - 7 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

Benedyne Stone
Benedyne Stone
Commission Counsel

2006-0486.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23579 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

RALPH MAKAI AU
NORTH SHORE WASTEWATER TREATMENT, L.L.C.
57-091 Kamehameha Highway
Kahuku, HI 96731

MICHAEL H. LAU, ESQ.
KRIS N. NAKAGAWA, ESQ.
RHONDA L. CHING, ESQ.
MORIHARA LAU & FONG LLP
Davis Pacific Center
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for North Shore Wastewater Treatment, L.L.C.



Karen Higashi

DATED: AUG - 7 2007